

Surface Transportation Board, DOT

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overnight mail on the parties and on the STB, together with a copy of the arbitration decision. Replies to such appeals may be filed within 20 days of the filing of the appeal with the Board. An appeal or a reply under this paragraph shall not exceed 20 pages in length. The parties shall furnish to the STB an original and 10 copies of appeals and replies filed pursuant to this section. The filing fee for an appeal will be as set forth in 49 CFR 1002.2(f)(87).

(b) The filing of an appeal, as allowed in paragraph (a) of this §1108.11, automatically will stay an arbitration decision pending disposition of the appeal. The STB will decide any such appeal within 50 days after the appeal is filed. Such decision by the STB shall be served in accordance with normal STB service procedures.

(c) The STB will review, and may vacate or amend, an arbitration award, in whole or in part, only on the grounds that such award

(1) Exceeds the STB's statutory jurisdiction; or

(2) Does not take its essence from the Interstate Commerce Act.

(d) Effective arbitration decisions rendered pursuant to these procedures, whether or not appealed to the STB, may only be enforced in accordance with 9 U.S.C. 9 and vacated by a court in accordance with 9 U.S.C. 10, except that an STB decision vacating an arbitration award is reviewable under the Hobbs Act, 28 U.S.C. 2321, 2342.

§ 1108.12 Additional matters.

Where an arbitration demand is filed by one or more complainants against one or more defendants, the complainants as a group and the defendants as a group shall be entitled to exercise those rights, with respect to the selection of arbitrators, as are conferred on individual arbitration parties.

PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

Sec.

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AUTHORITY: 5 U.S.C. 571 *et seq.*

SOURCE: 57 FR 32451, July 22, 1992, unless otherwise noted.

§ 1109.1 Invoking ADR in Board proceedings.

Any proceeding may be held in abeyance for 90 days while administrative dispute resolution (ADR) procedures (such as arbitration and mediation) are pursued. (Additional 90 day periods can be requested.) The period while any proceeding is held in abeyance to facilitate ADR will not be counted towards the statutory deadlines. All parties are required to indicate their written consent for ADR treatment. Requests that a proceeding be held in abeyance while ADR procedures are pursued should be submitted to the Chief, Section of Administration, Office of Proceedings. The Director of the Office of Proceedings shall promptly issue an order in response to such requests. Unless arbitration or some other binding process involving a neutral has been undertaken, any party believing that ADR procedures are not yielding the intended results shall inform the Chief, Section of Administration, Office of Proceedings and all parties in writing, and normal agency procedures will be reactivated by the Director of the Office of Proceedings by notice served on all the parties.

[74 FR 52907, Oct. 15, 2009]

§ 1109.2 Appeals from arbitration decisions.

Appeals are limited to clear errors of general transportation importance, and not issues of causation or fact. Arbitration awards can be challenged on the basis that they do not take their essence from the Interstate Commerce Act, or are not limited to the matters the parties have referred for arbitration. Appeals are limited to 10 typewritten pages. Parties will have 20 days from the service date of the decision to file, and opposing parties 20 days to answer. Arbitration decisions will become effective in 30 days unless a party seeks a stay of the decision within 10 days of

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its issuance, and we grant the stay. Appeals and stay petitions should be limited to extraordinary circumstances.

[57 FR 32451, July 22, 1992; 57 FR 35628, Aug. 10, 1992]

§ 1109.3 Confidentiality in ADR Matters

In all ADR matters involving the Board, whether under the Administrative Dispute Resolution Act or not, the confidentiality provisions of that Act (5 U.S.C. 574) shall bind the Board and all parties and neutrals in those ADR matters.

[67 FR 36822, May 28, 2002]

§ 1109.4 Mandatory mediation in rate cases to be considered under the stand-alone cost methodology.

(a) A shipper seeking rate relief from a railroad or railroads in a case involving the stand-alone cost methodology must engage in non-binding mediation of its dispute with the railroad upon filing a formal complaint under 49 CFR Part 1111.

(b) Within 10 business days after the shipper files its formal complaint, the Board will assign a mediator to the case. Within 5 business days of the assignment to mediate, the mediator shall contact the parties to discuss ground rules and the time and location of any meeting. At least one principal of each party, who has the authority to bind that party, shall participate in the mediation and be present at any session at which the mediator requests that the principal be present.

(c) The mediator will work with the parties to try to reach a settlement of all or some of their dispute or to narrow the issues in dispute, and reach stipulations that may be incorporated into any adjudication before the Board if mediation does not fully resolve the dispute. If the parties reach a settlement, the mediator may assist in preparing a settlement agreement.

(d) The entire mediation process shall be private and confidential. No party may use any concessions made or information disclosed to either the mediator or the opposing party before the Board or in any other forum without the consent of the other party.

(e) The mediation shall be completed within 60 days of the appointment of

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the mediator. The mediation may be terminated prior to the end of the 60-day period only with the certification of the mediator to the Board. Requests to extend mediation, or to re-engage it later, will be entertained on a case-by-case basis, but only if filed by all interested parties.

(f) Absent a specific order from the Board, the onset of mediation will not affect the procedural schedule in stand-alone cost rate cases, set forth at 49 CFR 1111.8(a).

[68 FR 17313, Apr. 9, 2003]

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

Sec.

- 1110.1 Applicability.
- 1110.2 Opening of proceeding.
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- 1110.7 Availability of dockets.
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- 1110.9 Petition for waiver.
- 1110.10 Petitions for reconsideration.

AUTHORITY: 49 U.S.C. 721.

SOURCE: 47 FR 49556, Nov. 1, 1982, unless otherwise noted.

§ 1110.1 Applicability.

This part contains general rule-making procedures that apply to the issuance, amendment, and repeal of rules, general policy statement, or other interpretation of rules or law of the Surface Transportation Board, adopted under the procedures of section 553 of title 5 of the United States Code (the Administrative Procedure Act).

§ 1110.2 Opening of proceeding.

(a) The Board may open a rule-making proceeding on its own motion. In doing so, it may consider the recommendations of other agencies of the United States and of other persons.

(b) Any person may petition the Board to issue, amend, or repeal a rule.

(c) Each petition seeking the institution of a proceeding, filed under this section must: